

In the Matter Of:

MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

19-cv-265-NSR

MARC H. FISHMAN

October 17, 2023



ESQUIRE
DEPOSITION SOLUTIONS

800.211.DEPO (3376)
EsquireSolutions.com

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Case No.: 19-cv-265-NSR

-----x

MARC H. FISHMAN,

Plaintiff,

-against-

CITY OF NEW ROCHELLE, POLICE
OFFICER LANE SCHLESINGER SHIELD
#1058, JOSEPH F. SCHALLER, ROBERT
GAZZOLA, IN HIS OFFICIAL CAPACITY
AS POLICE COMMISSIONER OF THE
CITY OF NEW ROCHELLE POLICE
DEPARTMENT, SERGEANT MYRON
JOSEPH SHIELD #18, & COUNTY OF
WESTCHESTER,

Defendants.

-----x

REMOTE DEPOSITION OF MARC H. FISHMAN

Tuesday, October 17, 2023

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. J10406555

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
2

October 17, 2023

1:07 p.m.

REMOTE deposition of MARC H. FISHMAN,
held pursuant to Notice, before Amy A. Rivera,
Certified Shorthand Reporter, Registered
Professional Reporter, Certified LiveNote Reporter,
and a Notary Public.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

3

MARC H. FISHMAN

R E M O T E A P P E A R A N C E S :

LAW OFFICE OF CANER DEMIRAYAK, ESQ., P.C.

Attorney for Plaintiff

One Pierrepont Plaza

300 Cadman Plaza, 12th Floor

Brooklyn, NY 11201

BY: CANER DEMIRAYAK, ESQ.

THE QUINN LAW FIRM

Attorneys for Defendants

399 Knollwood Road, Suite 220

White Plains, NY 10603

BY: LALIT K. LOOMBA, ESQ.

ALSO PRESENT:

Heidi Sarsony, Legal Video Specialist

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

4

1 MARC H. FISHMAN

2 MR. DEMIRAYAK: I want to make a
3 statement on the record. Any objection?

4 MR. LOOMBA: I don't know what you're
5 going to say, so go ahead.

6 MR. DEMIRAYAK: Cool. So I just want
7 to confirm on the record that we did receive
8 an audio call and two videos from the police
9 station regarding this incident several days
10 ago. I have reviewed it. My client has
11 listened to the audio; however, my client
12 has not been able to access the video or the
13 audio connected to the video at this time.

14 We are working on trying to make it
15 into an accessible format for him. So if
16 you are going to ask questions regarding the
17 police precinct video, just keep in mind
18 that although it has been exchanged, the
19 witness himself has not been able to view it
20 and understand anything on it at this point.

21 Additionally, we'll follow up in
22 writing, but there appears to be 51 minutes
23 of missing video, which we're very concerned
24 about. It's not a point of contention for
25 today. Today you're going to be questioning

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

5

1 MARC H. FISHMAN

2 Mr. Fishman regarding this lawsuit, and
3 we'll follow up with that separately.

4 Other than that, I just want to thank
5 you for agreeing to do this remotely and to
6 working on an accommodation for Mr.
7 Fishman's disabilities.

8 Other than that, we are ready to
9 proceed.

10 MR. LOOMBA: Okay. And that's fine,
11 and I'll just say that pursuant to our
12 agreement, if for some reason this remote
13 deposition is not successful for whatever
14 reason, maybe an inability to communicate or
15 difficulties with communication, then
16 pursuant to our agreement, you know, we
17 reserve the right to continue the deposition
18 as necessary in person, but hopefully we
19 won't have to get to that and that we'll be
20 successful today.

21 MR. DEMIRAYAK: And I don't think we
22 will have an issue today. This realtime
23 transcription that I'm seeing on my own
24 screen as well appears to be the type of
25 accommodation that will make it much easier

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

6

1 MARC H. FISHMAN

2 for Mr. Fishman to fully participate. I
3 don't expect any issues today, but if there
4 are, he will let you know.

5 MR. LOOMBA: Very good. We can swear
6 him in then.

7 VIDEOGRAPHER: Let me do my read on
8 and then she can swear him.

9 This is file 1 to the videotaped
10 deposition of Marc Fishman in the matter of
11 Marc Fishman versus City of New Rochelle,
12 being heard before the U.S. District Court,
13 Southern District of New York, case number
14 19-CV-265 NSR.

15 This deposition is being held via Zoom
16 conferencing with all parties appearing
17 remotely on October 17, 2023. The time is
18 approximately 1:07 p.m.

19 The court reporter is Amy Rivera and
20 my name is it Heidi Sarsony, the
21 videographer.

22 Counsel, please introduce yourselves
23 and affiliations, and then the witness will
24 be sworn. Thank you.

25 MR. LOOMBA: My name is Lalit Loomba.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

7

MARC H. FISHMAN

I'm a partner at The Quinn Law Firm. We represent the City of New Rochelle.

MR. DEMIRAYAK: This is Caner Demirayak, plaintiff's counsel for Mr. Marc Fishman.

M A R C F I S H M A N, having been duly sworn by the Notary Public, testified as follows.

EXAMINATION

BY MR. LOOMBA:

Q. Good morning, Mr. Fishman. My name is Lalit Loomba. I'm an attorney at The Quinn Law Firm. We represent the City of New Rochelle in your lawsuit. We're here to take your deposition today.

How are you feeling today?

A. I'm okay. I have a headache, sore throat, but I'm okay. Good morning.

Q. Good morning.

And Mr. Fishman, where are you located right now?

A. I'm in Rancho Mirage, California.

Q. And are you inside a room somewhere?

A. Yes.

Q. And is there anybody else inside the

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

19

MARC H. FISHMAN

real estate.

Q. Okay. And you continued to do that work today. Is that right?

A. Yes.

Q. At one time you were married to Jennifer Solomon. Is that correct?

A. Yes.

Q. Do you remember when you first married Ms. Solomon?

A. We got married July 4th, 2010.

Q. Was that your first marriage?

A. Yes.

Q. And when did your divorce with Ms. Solomon become final?

A. The trial -- the divorce trial was in August of 2012. I believe the judgment was signed off by the judge and recorded in October 2012.

Q. Did you remarry after your judgment of divorce was entered?

A. No.

Q. In 2018, you were -- I think you had a relationship with Isabella Bolivar. Is that correct?

A. Yes.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
21

MARC H. FISHMAN

Q. Okay.

A. What day was that? Let me just see here.

Q. That would have been about a year ago?

A. Yes, October 2022, Counselor, yes. October 2022, yes.

Q. How long was the visit when you came to New York at that time?

A. In New York itself, I think it was half a day.

Q. How long were you in New York State during that visit?

A. Half a day.

Q. And then you flew back to California?

A. No, I traveled to New Jersey and Pennsylvania.

Q. Do you have any family in -- actually, withdrawn.

You have four children. Am I right?

A. Yes.

Q. The youngest are twins, and then you have one older son and one older daughter.

Did I get that correct?

A. You got it correct, yes.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
22

MARC H. FISHMAN

Q. And how old is your older, the oldest daughter now?

A. My oldest daughter right now is 19 and I believe going to be 20 in February 9th next year.

Q. Okay. And her name is Joanna?

A. Joanna Dora, yes.

Q. And I think then just going, you know, the next one, say going in reverse age would be your son Jonah. Is that correct?

A. Yes, Jonah Sydney Fishman, yes.

Q. And how old is Jonah now?

A. Jonah is 17 and 11 months, he'll be 18, November 20th.

Q. And then the two younger ones, the twins, how old are they?

A. They're Sky and Aiden. They are 15 and a half. They were born in July of 2008.

Q. Where does Sky and Aiden live right now?

A. I believe the boys live at 54 Halcyon Terrace, New Rochelle, New York.

Q. Okay. And that's with Ms. Solomon, their mother?

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
23

MARC H. FISHMAN

A. Yes, I believe so.

Q. And same for Jonah?

A. You just mentioned the boys. I have three boys, yes, three boys live at 54 Halcyon Terrace.

Q. You're absolutely correct, Mr. Fishman. So Sky, Aiden, and Jonah live with their mother in New Rochelle, correct?

A. As far as -- as far as the reports I receive from the school, yes.

Q. Okay. And is your oldest daughter in college now or is she still in high school?

A. I've been informed she's in the University -- at Binghamton University, Binghamton, New York; sophomore.

Q. That's great. Thank you.

And right now, just a few questions about your medical care. Do you have a sort of a regular primary care physician in California?

A. Not a regular physician, I have a primary care group.

Q. And what's the name of that group?

A. Eisenhower Primary Care.

Q. Is that also in Rancho Mirage?

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
56

MARC H. FISHMAN

you know, for the, you know, denied in person and virtual visits pending in the appellate courts New York.

Q. Okay. Understood. Thank you.

We were talking about your disability aides, Efrim Cohen, you mentioned Joyce Fishman. Were there any others?

A. Yes.

Q. Who?

A. I had Isabelle Bolivar Court-appointed as the American With Disabilities Act aide.

Q. Which Court appointed her?

A. Family Court Judge Michelle Schauer in Yonkers. She moved to Yonkers and took the case with me.

Q. Is that how you first met Ms. Bolivar?

A. No.

Q. When did you first meet her?

A. I met Ms. Bolivar in December 2015.

Q. When was she appointed by Judge Schauer?

A. I believe the appointment was in March of 2018 in Court order.

Q. Okay. Did you ever live with

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
57

MARC H. FISHMAN

Ms. Bolivar?

A. Yes.

Q. When did you first start living with her?

A. 2016.

Q. And that was in your apartment in Riverdale?

A. Yes.

Q. And how long did you live together with her in that apartment?

A. We lived together through January of -- let's see, through half of January 2022.

Q. Why did you and she stop living together?

A. Because I'm in rehab and surgeries in California and she still lives in New York.

Q. Does she still live in your apartment in Riverdale?

A. No.

Q. Do you own that apartment or did you -- withdrawn.

Did you ever own that apartment?

A. It's not owned in my individual name, no.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
63

MARC H. FISHMAN

confirm the visit that it was Hanukkah, and I
celebrate Hanukkah, I'd like to see my kids, and
is my visit on for the, you know, two-week cycle,
which was tomorrow, the 15th.

She wrote: Pick me up at 9 a.m. and,
you know, I'll be outside for you to come get me
for the visit.

Q. Okay. And so, am I correct that then
you and -- Ms. Bolivar was living at your
apartment in the Riverdale at the time?

A. Yes.

Q. And so the two of you woke up, got
started, and drove into -- drove to pick up
Ms. Elliott, the supervisor, correct?

A. Right. Ms. Bolivar drove. I was the
passenger, yes, to pick up Ms. Elliott in Harlem,
yes.

Q. Okay. And you picked her up at her
house?

A. At her apartment building.

Q. Her apartment building, thank you.
And had you done that before?

A. Yes.

Q. When you -- what time did you and

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
68

MARC H. FISHMAN

A. Yes.

Q. How often did that occur?

A. Practically every visit on the return, Ms. Bolivar and Ms. Elliott, you know, drove to the house, you know, to drop off or pick up kids, one or the other.

Q. Okay. So how many times had Ms. Bolivar driven to the vicinity of Ms. Solomon's house at the beginning of the visit?

A. At least half a dozen times.

Q. Okay. So you leave the gas station, you driver towards Halcyon Terrace, and your testimony is that Ms. Bolivar parked the car about four houses away from Ms. Solomon's house?

A. Right.

Q. What happened next?

A. Ms. Ann Elliott got out of the car and walked onto Jennifer's property and rang the doorbell to speak with Jennifer.

Q. From where the car was parked, could you -- did you have a direct line of sight to Ms. Solomon's front door?

A. Yes.

Q. What did you observe?

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
70

MARC H. FISHMAN

Q. You had a direct line of sight to
Jonah as well?

A. I did.

Q. Okay. And when you were in the car,
were the windows open or closed?

A. When I was in the car, the windows
were closed.

Q. Okay. I should have been more
specific.

When you were in the car and the car
was parked, you know -- you know, as we were
discussing it, the windows were closed?

A. Yes.

Q. Okay. Did you roll down the window or
open the door and attempt to talk to Jonah?

A. I didn't roll down a window or open a
door, no.

Q. Did you attempt to talk to Jonah?

A. Yes, I got out of the car as Ann
Elliott was walking back and I yelled hello to my
son, Jonah.

Q. To get out of the car, you had to open
the door, right?

A. Yes.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

71

MARC H. FISHMAN

Q. Okay. So you did open the door?

A. Yes, I opened the door as Ann Elliott walked back to the car.

Q. You got out and you said hello to your son, Jonah?

A. Right. It appears Ann Elliott was walking towards us, right next to my son, because the driveway is after the front entrance after a landscaped area, I saw her walk away from the front entrance through the landscaped area towards the driveway, and I walked out of the car, stayed by the car, as Ann is walking towards to me, Ann way moving some stuff in the back seat so Jonah could get in with his 17 pieces of hockey safety equipment I bought him, you know.

Q. Okay. By the way, did he have that equipment with him?

A. He had the hockey stick with him.

Q. I know a little bit about hockey, so I know there's a lot involved there. So did he have all that gear with him or was it just his hockey stick?

A. He had the hockey stick, he had the hockey puck, he had some of the hockey tape. I

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

72

MARC H. FISHMAN

saw there's like a substance we use to, I guess,
rub the portion of the hockey stick that was on
the ground. And I saw a helmet in the -- in the
driveway where he was playing. I saw a net.

So, yeah, I saw hockey equipment, not
all of it, but I saw hockey equipment in that
driveway.

Q. What about his skates?

A. I saw the skates on the driveway as
we -- as we drove by the house.

Q. Okay. So all right. You get out of
the door. You say hello to your son, Jonah. Does
he answer you?

A. No.

Q. Did he -- did you make eye contact
with him?

A. No.

Q. Is there anything about the way he
acted that made you believe he heard you?

A. No, I don't think he heard me.

Q. What happened next?

A. As Ann Elliott got close to the car,
she said, the visit has been canceled. Your
ex-wife has canceled the visit.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
73

MARC H. FISHMAN

Q. By the way, did Jonah -- as Ann Elliott was walking back towards the car, was he still just playing in the driveway?

A. Yes, he had a -- there was another male there who was older and taller, who he was playing with, and there was a net, and there was hockey equipment, and they were -- they were shooting a hockey stick and playing in the driveway.

Q. Did you ever see him run back to his house?

A. No, not while I was there. He didn't run back. He was playing with his friend the entire time we were there.

Q. So Ann comes back and says: The visit's been canceled, and tell me what happens after that?

A. I told Ann I wanted to go make a full report at the police station of a visitation violation and asked the cops if they could enforce my visitation order.

And Ms. Bolivar drove to the police station, I believe -- I think it's on Main Street or North Avenue. It's the building next to the

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
102

1 MARC H. FISHMAN

2 Ms. Elliott was there as well, did you tell
3 Officer Schlesinger that you suffered from a
4 disability?

5 A. Yes, and I showed him my two
6 disability cards.

7 Q. Okay. And when you said you suffered
8 from a disability, which specific disability did
9 you mention?

10 A. I said, I suffer from a traumatic
11 brain injury and encephaloneuralgia and have a
12 difficulty with my burning eyes reading very small
13 print, and that the print on the order he showed
14 me was very, very tiny.

15 So I started reading it, I get a
16 headache, at which time, I started getting redder
17 and redder, and got a headache, and had an
18 encephaloneuralgia attack while sitting at the
19 table.

20 Q. And did you ask Officer Schlesinger
21 for a specific accommodation?

22 A. Multiple ones, yes.

23 Q. Which specific accommodations did you
24 request?

25 A. I asked for my aide to come in to

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
103

MARC H. FISHMAN

assist immediate with full and effective communication and reading and interpreting the order. I asked for myself and my aide to go to the car to get the Court file out of the trunk that had the order for the aide and had the visitation orders, as well as the calendar of visits and my medical information.

I asked the officer to go to the car and get it, if he wouldn't let myself or Isabelle go. I asked for a transcriber or a note taker to assist me if he wasn't going to allow Isabelle to come in. And I asked him for a notepad and a pen.

Q. Did you request any other disabilities?

A. I asked him to call, you know, my neuro -- neuro doctors to confirm my disability and the phone number on the traumatic brain injury card, which is my -- my father to describe the accommodations and affirm the disability.

Q. Did you ask him for any other accommodations?

A. Yeah, I believe also to call my surgeon for the Inspire. There were three numbers; one was for Dr. Lubenaire, the

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
104

1 MARC H. FISHMAN

2 neurosurgeon, on the implant card, the second
3 implant card was the Inspire with Dr. Boris
4 Chernobilsky's number on it, and then the other
5 one, my father.

6 And then I reiterated, I need
7 Ms. Bolivar here to assist me with communication
8 in her Court-appointed role as the visitation and
9 Americans With Disabilities advocate and allow her
10 to come in.

11 Q. Other than what you've listed, did you
12 ask for any other accommodations?

13 A. I don't recall.

14 Q. If Ms. Bolivar had been in the room
15 with you, how would she have -- how do you think
16 she would have helped you?

17 A. Well, Ms. Bolivar would have brought
18 the order, and she's appointed from March of 2018,
19 and Ms. Bolivar would have been able to give a
20 third perspective on what happened that day as the
21 Court-appointed aide so that the officer didn't
22 just have what he claimed was Jennifer's version,
23 Ann Elliott's version, and my version.

24 She would also have been able to
25 isolate the portions of the order of protection

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
105

MARC H. FISHMAN

that have a carve-out for visitation, you know, and also affirm the fact that I never received a written copy of the alleged order of protection from, I believe, it's June 27, '17, that was allegedly written while I was in jail and never given a physical copy to me.

She would have affirmed that, and she would have been able to read the order. With encephaloneuralgia and burning eyes, I couldn't read single-spaced orders.

Q. So if she was there, she could have assisted you in -- in making Officer Schlesinger understand that you had a right to be where you were and that you did not violate the order. Is that -- is that accurate?

A. That's a portion of accurate. She could have read the order, Judge Schauer's order didn't comply with the ADA accommodation of 16-bold print which was granted to me from Office of Court Administration, and William Curry, the ADA advocate.

Since this order was single typed, very tiny print in the order of protection, I could not read it. I could not read it without an

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
106

1 MARC H. FISHMAN

2 aide, without getting a headache.

3 Q. Understood.

4 And if she had been there and read the
5 order, that would have helped you explain to
6 Officer Schlesinger that, in fact, you hadn't
7 done, you know, you had not violated any laws,
8 right?

9 A. Correct. She could explain the fact
10 that I didn't go on her property and that the
11 order of protection was subject to limited
12 supervised visitation every other Saturday, which
13 this was and, that this was a preconfirmed,
14 prepaid, prescheduled visit, and she could have
15 went over the cancellation terms had my ex-wife or
16 the AFC or Ann or anyone canceled it in writing,
17 which is required, then it would immediately be
18 rescheduled to the following weekend.

19 Without her help, I could not, you
20 know, read that order or try to explain it to
21 Officer Schlesinger, who said it was the most
22 complicated visitation order he ever saw in his
23 life.

24 Q. And the documents that were in the
25 trunk of your car, is it fair to say that that

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
107

1 MARC H. FISHMAN

2 would -- if you had had access to them, that would
3 have also helped you explain to Officer
4 Schlesinger that, in fact, you had not violated
5 any laws, correct?

6 A. Well, it wasn't my car, Isabelle
7 Bolivar's car. But, yes, the documents she had in
8 her purse and in her smart phone, and the paper
9 documents would have shown that between 10 and 5,
10 the 1st and 15th of every month, we have
11 supervised visits. There's no violation, as long
12 as Ann Elliott is around and the visit wasn't
13 canceled in writing beforehand.

14 And that we didn't go on any property,
15 and Ms. Bolivar could emphasize that. We didn't
16 go on any property, and I hadn't communicated to
17 Ms. Solomon, I haven't communicated with her
18 directly since 2015.

19 Q. And I guess what I want to make sure I
20 understand properly is that your position is if
21 you had had access to your documents in the trunk,
22 and if Ms. Bolivar had been there and was able to
23 assist you in reading the orders, all of that
24 could have helped you explain to Officer
25 Schlesinger that you, in fact, had not violated

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

111

1 MARC H. FISHMAN

2 of that would have helped you explain to Officer
3 Schlesinger that you had not violated any laws?

4 A. Yes, together with a notepad or
5 Ms. Bolivar could write it in large print and
6 clarify the complicated order to everyone,
7 including me.

8 Q. So you're saying also that in addition
9 to the documents in the trunk, and having
10 Ms. Bolivar present, if you had had access to a
11 note pad, that also would have helped you explain
12 to Officer Schlesinger that you had not violated
13 any laws?

14 A. A notepad and pen, yes.

15 Q. Okay.

16 A. For my aide to use to definitely write
17 down pages and paragraph numbers of the
18 complicated order.

19 Q. Okay. Thank you.

20 So besides Mr. -- sorry -- besides
21 Officer Schlesinger, you said that you
22 interactions with a lieutenant?

23 A. With, I believe, Myron Joseph. I'm
24 not sure he was a lieutenant. I think he was a
25 lieutenant. I'm not sure what his title was then.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023

117

MARC H. FISHMAN

A. Twice.

Q. When was the -- was this the first time or the second time?

A. Second time.

Q. And when was the first time?

A. I believe it was in 2010 in Fairfield County, Danbury, Connecticut.

Q. By the way, do you remember while you were in the holding cell, the one that we could see there in camera No. 3 telling Officer Schlesinger: I appreciate your professionalism?

A. I don't recall.

Q. And do you recall in a separate moment while you were still inside the holding cell that we can see in camera No. 3, that you said to Officer Schlesinger: Thank you for your professionalism?

A. I know I told him thank you for the coat.

Q. That's not my question, Mr. Fishman. Just --

A. No, I don't recall that.

Q. Okay. Thank you.

All right. So following this arrest,

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
118

1 MARC H. FISHMAN

2 you were charged with violating an order of
3 protection. Is that right?

4 A. Criminal contempt in the second
5 degree; that's right.

6 Q. And then you stood trial before a jury
7 in January of 2020. Is that correct?

8 A. Yes.

9 Q. All right. And the jury found you
10 guilty of attempting to violate the order of
11 protection?

12 A. Attempting and criminal contempt in
13 the second degree, both charges for one alleged
14 crime.

15 Q. And you made -- and lawyers
16 representing you on your behalf made various
17 motions to vacate the jury verdict, correct?

18 A. A lawyer made motions and I made
19 motions pro se.

20 Q. Okay. So both yourself and lawyers on
21 your behalf moved to vacate the jury verdict. Is
22 that accurate?

23 A. Yes.

24 Q. And is it accurate that all those
25 motions were denied?

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
119

MARC H. FISHMAN

A. No.

Q. So you're saying that the jury verdict was vacated by a Court order?

A. No. I'm saying one of the motions was not answered by Judge Zuckerman. He never answered.

Q. And am I correct that following the jury verdict finding you guilty of attempting to violate an order of protection and violating the order of protection, that you have not appeared for your sentencing?

A. That's incorrect. I appeared over a half dozen times in person until he decided not to sentence me. I also appeared virtually more than a half a dozen times, and they didn't sentence me.

Q. And you appeared in January of 2020 to be sentenced?

A. Post-January 28th; January, February and March of '20; yes, sir.

Q. And you understand there's a bench warrant for your arrest because you have not appeared for your sentencing in this case?

MR. DEMIRAYAK: Note my objection as asked and answered.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
122

1 MARC H. FISHMAN

2 3:51 p.m.

3 (Recess.)

4 VIDEOGRAPHER: We are back on the
5 record. The time is 4 o'clock p.m.

6 BY MR. LOOMBA:

7 Q. Okay. Welcome back, Mr. Fishman.

8 So we had, when we stopped, I was
9 showing you what we were going to mark as Exhibit
10 A for your deposition, which is your first amended
11 complaint, and I am now showing you a portion of
12 paragraph 83 of that document.

13 Do you see it on your screen?

14 A. Yes.

15 Q. Okay. And I'll read it slowly and you
16 can watch it and you can also watch the realtime
17 transcription. Paragraph 83:

18 The failure to accommodate resulted in
19 plaintiff being arrested and charged for crimes he
20 was actually innocent of and for which the police
21 lacked probable cause, but for the failure to
22 accommodate plaintiff's disabilities, he would
23 have been able to explain to the defendants that
24 the 28-page custody and visitation order made his
25 conduct on December 15, 2018 completely legal.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
123

MARC H. FISHMAN

Do you see the -- do you see where I
read?

A. Yes.

Q. Okay. And I think you know, I'm just
confirming your earlier testimony, but do you
believe that to be accurate?

A. Yes, a hundred percent accurate.

MR. LOOMBA: Okay, good; all right.

I'm going to mark the next document;
sorry, just bear with me here. This is --
oh, sorry. Here we go; okay.

We're going to mark this as Exhibit B
like boy.

(Exhibit B, Plaintiff's initial
disclosure, was marked for identification at
this time.)

Q. And Mr. Fishman, do you see that this
is a document called "Plaintiff's Initial
Disclosure, pursuant to Rule 26A"?

A. Yes.

Q. Okay. Have you seen this document
before?

A. Yes.

Q. All right.

MARC H. FISHMAN
MARC H. FISHMAN -against- CITY OF NEW ROCHELLE

October 17, 2023
150

CERTIFICATE

I, AMY A. RIVERA, a Certified Shorthand Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination MARC H. FISHMAN was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Notary Public of the State of New Jersey

My commission expires July 29, 2025

License No. XI00939

Dated: October 17, 2023